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OFFICE OF PETITIONS

In re Patent No. 5,700,654	:	
Issue Date: December 23, 1997	:	
Application No. 08/304,147	:	ON PETITION
Filed: September 12, 1994	:	
Patentee(s) L. Jackson Roberts et al	:	

This is a decision on the petition under 37 CFR 1.378(c), filed September 13, 2004, and supplemented on February 16, 2005, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within **TWO (2) MONTHS** from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified patent issued on December 23, 1997. Therefore, the grace period in 35 U.S.C. § 41(b) for paying the first year maintenance fee expired on December 24, 2001.

A petition under 37 CFR 1.378(c) must be filed within twenty-four months after the six month grace period specified in 35 USC 41(b). The six month grace period for the instant patent expired on December 24, 2001. Accordingly, an unintentional petition to reinstate the instant patent must have been submitted no later than December 23, 2001. Since the petition was not timely filed, the instant patent will not be reinstated under the unintentional provisions of 37 CFR 1.378(c).

35 U.S.C. § 41(c)(1) authorizes the Commissioner to accept a delayed maintenance fee payment within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) if the delay is shown to have been unintentional, and authorizes the Commissioner to accept a delayed maintenance fee payment at any time if the delay is shown to have been unavoidable. Thus, 35 U.S.C. § 41(c)(1) does not authorize the Commissioner to accept a delayed maintenance fee payment later than twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) unless the delay is shown to have been unavoidable. Since the instant petition was not filed within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b), the Commissioner cannot accept a delayed maintenance fee payment for the above-identified patent under 37 CFR 1.378(c).

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Should petitioner wish to pursue reinstatement of the above-identified patent on the basis of unavoidable delay, petitioner should file a petition under 35 U.S.C. § 41(c) and 37 CFR 1.378(b), which must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

Further correspondence with respect to this matter should be addressed as follows:


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Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.


Karen Creasy
Petitions Examiner
Office of Petitions
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for Patent Examination Policy